

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

- - - - -

SOVERAIN SOFTWARE,)	
LLC,)	
)	
Plaintiff,)	
)	Civil Action No.
vs.)	6:07-CV-00511-LED
)	
CDW CORPORATION,)	
NEWEGG INC.,)	
REDCATS USA, INC.,)	
SYSTEMAX INC.,)	
ZAPPOS.COM, INC.,)	
REDCATS USA, L.P.,)	
THE SPORTSMAN'S)	
GUIDE, INC., and)	
TIGERDIRECT, INC.,)	
)	
Defendants.)	

- - - - -

VIDEOTAPED DEPOSITION OF EDWARD TITTEL

- - - - -

WEDNESDAY, SEPTEMBER 2, 2009

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AGENCY

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1 DEPOSITION OF EDWARD TITTEL
2 a witness herein, called by the Plaintiff for
3 examination, taken pursuant to the Federal
4 Rules of Civil Procedure, by and before
5 Constance Lee, a Professional Court Reporter
6 and Notary Public in and for the Commonwealth
7 of Pennsylvania, at the law offices of The
8 Webb Law Firm, 9th Floor, Koppers Building,
9 436 Seventh Avenue, Pittsburgh, Pennsylvania,
10 on Wednesday, September 2, 2009, at 9:33 a.m.

11 -----
12 COUNSEL PRESENT:

13 For the Plaintiff:
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1 I N D E X
2 -----
3 WITNESS: EDWARD TITTEL

5 E X A M I N A T I O N : PAGE
6 BY MR. GIANNETTI 4

8 E X H I B I T S :
9 TITTEL DEPOSITION NO. 1 32
10 TITTEL DEPOSITION NO. 2 91
11 TITTEL DEPOSITION NO. 3 119
12 TITTEL DEPOSITION NO. 4 125
13 TITTEL DEPOSITION NO. 5 126
14 TITTEL DEPOSITION NOS. 6 through 8 145
15 TITTEL DEPOSITION NO. 9 167
16 TITTEL DEPOSITION NO. 10 178
17 TITTEL DEPOSITION NO. 11 196
18 TITTEL DEPOSITION NO. 12 200

1 P R O C E E D I N G S

2 -----

3 VIDEOGRAPHER: This is tape number
4 one in the video deposition of Ed Tittel taken
5 in the matter of Sovereign Software versus CDW
6 Corporation. Today is September 2nd, 2009,
7 and we're going on the record at approximately
8 9:33 a.m. Would counsel please identify
9 themselves for the video record.

10 MR. GIANNETTI: For the Plaintiff,
11 Sovereign Software, Tom Giannetti and Ognian
12 Shentov of Jones Day New York.

13 MR. BALDAUF: For the Defendant,
14 Newegg, Inc., Kent Baldauf, Jr. And James
15 Bosco from the Webb Law Firm.

16 VIDEOGRAPHER: Thank you, Counsel.
17 The court reporter will now swear in the
18 witness, please.

19 EDWARD TITTEL
20 a witness herein, having been first duly
21 sworn, was examined and testified as follows:

22 -----

23 E X A M I N A T I O N

24 BY MR. GIANNETTI:

1 Q. May we have your full name and
2 address, please.
3 A. Certainly. My full legal name is
4 Edward Richard Tittel. I reside at 2443 Arbor
5 Drive, in Round Rock, Texas, and I'll even
6 give you the zip code if you'd like.

7 Q. Go ahead.

8 A. 78681-2160.

9 Q. Mr. Tittel, is this your first
10 deposition?

11 A. Yes, it is.

12 Q. Is this your first time testifying?

13 A. Yes, it is.

14 Q. All right. I'll be asking you some
15 questions, and if you have problems
16 understanding one of my question, will you
17 please let me know?

18 A. Yes, I will.

19 Q. Mr. Tittel, are you a lawyer?

20 A. No, sir, I am not.

21 Q. Have you ever studied the law?

22 A. No, sir, I have not.

23 Q. Are you a patent agent?

24 A. I don't even know what a patent

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1 yes. But my own direct knowledge of CGI comes
2 mostly from Perl.

3 Q. You also listed the Trevor report
4 and Trevor deposition.

5 A. Yes, sir.

6 Q. Did you review those in connection
7 with this?

8 A. Yes, I did.

9 Q. Did you -- have you ever met
10 Mr. Trevor?

11 A. No, sir, I have not.

12 Q. What's your understanding of
13 Mr. Trevor's role in the prior case? With
14 Amazon?

15 A. My understanding is that he was an
16 expert that was asked to appear and to opine
17 at the request of Amazon.

18 Q. The -- Trevor was associated with
19 CompuServe?

20 A. That's correct.

21 Q. CompuServe was a service, an online
22 service that you used; is that correct?

23 A. I was a SysOp on CompuServe while
24 working at Novell from 1987 until '91, '92.

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1 Q. '87 to '92?

2 A. Yes, sir.

3 Q. And as SysOp you presided over one
4 of the forums?

5 A. Yes.

6 Q. Which ones?

7 A. I was -- there were six of us that
8 presided over the Novell forums, and I was --
9 I mean -- there was so much traffic that they
10 actually had to allocate it across multiple
11 people.

12 Q. And what was your role as a SysOp?

13 A. There are two traditional
14 components to a SysOp's role. One of them is
15 best described as expert/guide, which is to
16 say to provide information about workings of
17 the system and also about the topics and
18 technologies on the discussion. Then there's
19 also the part of the role which you might
20 describe as either babysitter or traffic cop,
21 where you have to remind people that they
22 should be polite and behave themselves or not
23 indulge in certain kinds of language and so on
24 and so forth and, when necessary, to boot

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1 people off for breaking the rules.

2 Q. To prevent the flame wars from
3 breaking out?

4 A. To the degree possible, yes,
5 absolutely.

6 Q. Now, when you said to advise people
7 of the workings of the system, I think that's
8 what you said, you don't mean from a technical
9 standpoint; do you?

10 A. Well, it's sort of a
11 quasi-technical in the sense that at the time
12 CIS and Taps sys were operated by a lot of
13 fairly arcane keyboard strokes and things like
14 that, and occasionally people would ask how to
15 do things, and those of us who knew the answer
16 would provide them.

17 Q. CompuServe doesn't exist anymore;
18 does it?

19 A. I'm not aware if it exists or not.
20 I believe there may still be a CompuServe.com.

21 Q. Yeah, there is a CompuServe.com,
22 but you can verify this, you don't have to
23 take my word for this, I believe they went out
24 of business under -- their service closed down

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1 this summer.

2 A. Oh, interesting. I was not aware.
3 I pretty much stopped using CompuServe about
4 the same time that I left Novell in May of
5 1994.

6 Q. Did you get involved in the
7 technology used to support the CompuServe
8 system on a system programmer level?

9 A. No, sir, but because CompuServe was
10 a Novell customer and because I called on
11 Wright-Patterson Air Force Base in Dayton, I
12 got to know some people from CompuServe and
13 was somewhat aware of the inner workings of
14 their systems.

15 Q. Who would they be, the people that
16 you knew from CompuServe?

17 A. Boy, I cannot recall the names off
18 the top of my head, but I save all my e-mails,
19 so I can go back and find out, if you like.

20 Q. At the time you were associated
21 with CompuServe as a SysOp, was it a dialup
22 system?

23 A. Yes, sir.

24 Q. And that meant you had to use an

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1 analog phone like and a modem to get access?

2 A. Well, by the time the '90s rolled
3 around, most of the modems were like V.30
4 class or V.40 class, and at that time they
5 were no longer analog, per se. Of course,
6 they were still using analog to digital and
7 digital to analog, but it wasn't -- there were
8 no more acoustic covers in use at that point.

9 Q. But at that time period you were
10 not accessing CompuServe through the internet,
11 you were dialing it up.

12 A. Yes, sir, absolutely.

13 Q. Did you have any experience with
14 WinZip?

15 A. Yes, sir.

16 Q. As a user?

17 A. Yes, sir.

18 Q. Any programming experience for
19 WinZip?

20 A. No, sir.

21 Q. Did you have any firsthand
22 experience with the technology behind any
23 CompuServe Mall?

24 A. No, sir.

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1 Q. Did you have any firsthand
2 experience with the technology behind the
3 CompuServe service Eaasy Sabre?

4 A. No firsthand experience but some
5 knowledge.

6 Q. As a user?

7 A. Yes.

8 Q. Any experience firsthand, technical
9 experience with the CompuServe Travelshopper
10 service?

11 A. No, sir.

12 Q. Did any of the individuals -- were
13 the individuals -- were the individuals that
14 you mentioned earlier that you had contact
15 with in connection with Novell, were any of
16 those people responsible or involved with
17 those services that I mentioned, the
18 Travelshopper, the Eaasy Sabre, and the Mall?

19 A. No, sir.

20 Q. Does your knowledge of the
21 technology of those services -- let me
22 rephrase it.

23 Do you have -- do you have any
24 knowledge of the technology behind those three

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1 services that I mentioned, the Travelshopper,
2 the Eaasy Sabre, and the Mall, all on
3 CompuServe?

4 A. I have researched their behavior to
5 the extent that the current record permits, so
6 I would say I have some knowledge of those
7 systems.

8 Q. Does your research -- is your
9 research confined to the Trevor report and
10 deposition that you mentioned earlier?

11 A. No, sir. It's also based on
12 internet searches of documents and
13 descriptions about how those systems worked
14 and how they behaved and online chatter about
15 them at the time.

16 Q. And is that information listed in
17 your report?

18 A. Only where it was cited. So if it
19 wasn't cited, it doesn't appear.

20 Q. So all of the -- all of the sources
21 of your technical information on the
22 CompuServe services that I mentioned, Eaasy
23 Sabre, Travelshopper, Mall, those are listed
24 in the report?

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1 A. There are numerous books that are
2 listed, and then there are also those expert
3 reports to which you refer, yes, sir.

4 Q. Would you say that the books that
5 are listed here that relate to CompuServe are
6 really designed for CompuServe users?

7 A. Absolutely.

8 Q. Let's take -- let's go back to your
9 report. We were going down the list of items
10 here, and I see Montulli is mentioned. Did
11 you ever meet Mr. Montulli?

12 A. No, sir, I have not.

13 Q. What's your understanding of
14 Mr. Montulli's contribution, if any, to the
15 art of eCommerce?

16 A. As much as he hates the single-word
17 characterization, the first thing that pops to
18 mind is cookies.

19 Q. Mr. -- the development of the
20 cookie is attributed to Mr. Montulli; is that
21 right?

22 A. He was certainly involved in it.
23 I'm not sure that he was personally
24 responsible for it.

1 what I would call proper error handling
2 techniques, I quickly realized that Appendix G
3 was to Appendix F as a production system is to
4 a prototype or demonstration system.

5 Q. And is that when you changed your
6 view on the best mode issue that we discussed
7 earlier?

8 A. Yes, sir, it is.

9 Q. Now, you also mention here that you
10 reviewed the Trevor, Erenkrantz and Taylor
11 reports.

12 A. Yes, sir.

13 Q. And what was your purpose in doing
14 that?

15 A. My purpose was as stated in the
16 document, first and foremost to get a good
17 working model of what a report looks like,
18 how -- what elements it includes, how it
19 flows, and, you know, to get a sense of how to
20 implement the pro forma pieces thereof. To a
21 secondary degree, I was interested to see what
22 kinds of discussions the other experts had
23 proposed and defended in their work.

24 Q. Mr. Trevor talks about the

1 and the CompuServe travel system still
2 available on line, and the instructions that
3 are provided therein are in accordance with
4 what Trevor describes in his report.

5 Q. Are those items listed in your
6 report here?

7 A. No, sir, they are not. I did not
8 cite them.

9 Q. What was your understanding of what
10 you were required to list in your report?

11 A. Anything that I cited I was
12 required to list.

13 Q. And not everything that you
14 reviewed in connection --

15 A. Yes, sir, that's correct.

16 Q. Anything that you reviewed?

17 A. No. I said everything that I
18 cited, and then you said, everything that you
19 reviewed, and the question came across to me
20 as one where a positive answer would indicate
21 not everything that I had reviewed.

22 Q. I'm sorry about the confusion. I'm
23 glad that you straightened it out.

24 So your understanding was you have

1 CompuServe system in his report; is that
2 correct?

3 A. Yes, sir, that's correct.

4 Q. And did you -- did you use any of
5 the information in Mr. Trevor's report in
6 forming the conclusions that you included in
7 this document?

8 A. Yes, sir, I did. And specifically,
9 I was highly informed by the exhibits that he
10 put together where he actually marches through
11 the process of conducting an online travel
12 reservation and paying for an airline ticket
13 online. Since I was no longer able to run
14 those sort of transactions myself as a user, I
15 found them both illuminating and informative
16 as to the capabilities of systems involved and
17 as to their operation.

18 Q. Did you attempt to verify for
19 yourself the correctness of Mr. Trevor's
20 explanation of those systems?

21 A. To the degree that online
22 information was available to either confirm or
23 deny what he said, yes, I did. There is, for
24 example, an online manual for both Eaasy Sabre

1 to list everything that you cite in the report
2 but not everything you reviewed.

3 A. That's correct.

4 Q. What do you mean in this last
5 sentence here where you say, "There is little
6 overlap between their coverage and contentions
7 and what appears herein"?

8 A. I meant that the topics and the
9 subject matters that they covered in their
10 reports, with the exception of the Trevor
11 CompuServe stuff, had little or no bearing on
12 what I discuss further on in the report.

13 Q. So you meant to accept the Trevor
14 discussion of CompuServe in that sentence?

15 A. No, sir, I did not. I meant to
16 indicate that there was relatively little
17 material in all of those reports that was
18 relevant to what I was discussing. I don't
19 recall having made a formal statement of
20 acceptance of Trevor one way or the other,
21 except, of course, that I did cite Trevor,
22 which would indicate that by citing him I
23 accepted him. But that was not implied in the
24 statement you just read back to me.

1 Q. All right. You say here there's
 2 little overlap. Was there any overlap between
 3 the coverage of these reports?

4 A. I think we've just discussed where
 5 the overlap occurred.

6 Q. Trevor?

7 A. Yes, sir.

8 Q. Now, in the next paragraph you talk
 9 about -- the word "state" appears. Do you see
 10 "state"? And I'll read the whole document.
 11 "Other documents from the document database
 12 for the civil action number," and then the
 13 action number of this case appears.

14 I'll read you the first sentence,
 15 "These were provided to furnish me with
 16 evidence to review about common knowledge and
 17 prior discussion regarding how state could be
 18 maintained in a web browser session?"

19 Do you see that?

20 A. Yes, I can.

21 Q. Now, you use two different terms
 22 there. You use "state" and you use the term
 23 "session." Okay. Now, I'm going to ask you
 24 first, what do you mean by "state" in that

1 sentence?

2 A. If I may, I'll start by saying that
 3 state is a very important concept in the World
 4 Wide Web because HTTP, the protocol that is
 5 designed to transfer web pages between clients
 6 and servers, was specifically designed to be
 7 stateless. Even though HTTP itself is a
 8 stateless protocol, maintaining information
 9 about state ends up being important for any
 10 kinds of actions that involve multiple
 11 transfers of information between a client and
 12 a server.

13 So from that statement, a good
 14 definition of "state" is, information about
 15 prior activity that persists over time despite
 16 HTTP's inability to explicitly convey state
 17 information. And if you want to look at one
 18 of the interesting and challenging efforts
 19 that were underway pretty much from 1992 on,
 20 even an extent to the present day, creative
 21 and crafty ways of conveying state remains a
 22 very interesting problem on the web, even as
 23 we speak.

24 Q. Okay. Would an example, just

1 talking about an eCommerce system such as the
 2 ones involved in this lawsuit, would an
 3 example of state be the contents of somebody's
 4 shopping cart?

5 A. Yes.

6 Q. And then you go on in that sentence
 7 to talk about a web browser session. Do you
 8 see that?

9 A. Yes, sir.

10 Q. What do you mean by that?

11 A. A session is a sequence of client
 12 server response requests where those requests
 13 and responses share some kind of common
 14 thread. It's a very broad concept.

15 Q. It's a different thing than state;
 16 is that right?

17 A. State information is necessary to
 18 set up, maintain and ultimately terminate a
 19 session, but they are different, yes.

20 Q. What do you mean in this sentence
 21 where you say, "An essential collection of
 22 information to maintain persistent information
 23 about web users or customers wishing to shop
 24 or conduct other financial transactions," what

1 are you referring to there?

2 A. I'm referring to information that
 3 allows the client and the server to be
 4 reasonably sure, when they're talking to each
 5 other, that they're both talking about the
 6 same things and that the same user on the
 7 client side is interacting with the server on
 8 the server side.

9 Q. Were you trying to describe what a
 10 session was or what state was in that
 11 parenthetical?

12 A. I think it's probably safer to say
 13 I was describing how state and session work
 14 together to enable eCommerce to occur.

15 Q. Did you also look at source code
 16 from the OpenMarket source code control system
 17 as indicated here?

18 A. There are numerous elements in both
 19 Appendix F and Appendix G that came from the
 20 source code control system. They had numerous
 21 make files that were included in there.

22 Q. And did this effort relate to the
 23 best mode investigation that you talked about
 24 earlier?

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 CERTIFICATE

I, EDWARD TITTEL, do hereby certify that I have read the foregoing transcript of my deposition consisting of Pages 1 through 205, and it is a true and correct copy of my testimony except for the changes, if any, made by me on the attached Deposition Correction Sheet.

EDWARD TITTEL

(Date)

Notary Public

(Date)

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UNITED STATES DISTRICT COURT)
 EASTER DISTRICT OF TEXAS)

I, Constance Lee, Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness, all to the best of my skill and ability.

I further certify that the inspection, reading and signing of said deposition were not waived by counsel for the respective parties and by the witness and if after 30 days the transcript has not been signed by said witness that the witness received notification and has failed to respond and the deposition may then be used as though signed.

I further certify that I am not a relative, or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 16th day of September, 2009.

 Constance Lee